

DEPARTMENT OF SOCIAL SERVICES

/44 P Street, Sacramento, CA 95814



July 3, 1989

ALL-COUNTY LETTER NO. 89-59

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL SDSS ADOPTIONS DISTRICT OFFICES

SUBJECT: ADOPTION SET-ASIDES

The Department of Social Services (DSS) has recently received several inquiries regarding the Department's role and responsibilities when a petition to set aside a decree of adoption has been filed. Primarily the issues raised have focused on adoption set-aside petitions filed by stepparents who allege that fraud or misrepresentation occurred during the adoption process.

The purpose of this All-County Letter (ACL) is twofold: (1) to describe the differences between the two statutes which establish judicial authority for vacating or setting aside an adoption and (2) to state the Department's current position on these Civil Code (CC) Sections so that future misunderstandings can be avoided.

Civil Code Section 227b

- * CC Section 227b specifies that a set-aside petition may be granted when "any child...adopted under the foregoing provisions of this code" shows evidence of a developmental disability (DD) or mental illness (MI) as a result of conditions existing prior to the adoption, making the child unadoptable, and of which conditions the adopting parents had no knowledge or notice prior to the adoption decree. We interpret the broad wording of this section to include stepparent adoptions.
- * Set-asides filed under CC Section 227b must be filed within five years after entry of the decree of adoption.
- * This statute specifically assigns responsibility to DSS to file a full report with the court within 60 days after notice of the action and appear before the court for the purpose of representing the child.


Civil Code Section 227d

- * Civil Code Section 227d deals with any action to vacate, set-aside, or otherwise nullify an adoption decree based on a defect or irregularity of procedure in the adoption proceeding (e.g., consent obtained by fraud, duress or mistake).
- * A set-aside petition filed under these circumstances must be commenced within three years after entry of the adoption decree.
- * CC Section 227d also specifies that any set-aside petition that is based on any other grounds (e.g., adoption without the consent of the natural parent) must be filed within five years after the adoption decree is granted.
- * The provisions of CC Section 227d apply to all non MI/DD court-referred set-aside cases including those involving stepparent adoptions.
- * CC Section 227d is silent regarding assignment of any responsibility to DSS or another agency in these types of set-aside cases. In view of the specific assignment of responsibility to the Department in CC Section 227b, we interpret absence of such language in CC Section 227d to mean that the Department has no specific responsibility to participate in actions brought under this statute.

In conclusion, Department policy, based on the language of CC Sections 227b and 227d, is that the Department has no mandated responsibilities with regard to set-aside petitions unless the petition alleges the circumstances described in CC Section 227b (i.e., the adopted child shows evidence of a developmental disability or mental illness as a result of conditions existing prior to the adoption, making the child unadoptable, and the adopting parents had no knowledge prior to adoption).

Contrary to this interpretation of CC Sections 227b and 227d, DSS district office staff frequently receives court referrals of set-aside petitions in which one party alleges fraud on the part of another principal in the adoption proceedings. Many of the petitions are attempts by a stepparent to avoid child support obligations, particularly when a dissolution of marriage is imminent. In order to resolve this problem, DSS is working with the Judicial Council to clarify this matter.

If you have any questions or concerns regarding the contents of this All-County Letter, please contact Ms. Roberta Badal, Adoptions Policy Consultant at (916) 323-0471 or ATSS 473-0471.



LOREN D. SUTER
Deputy Director

cc: CWDA